No. 51.

FILED
OCT 19 1900
CLERK

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

Filed Oct. 19, 1900.

OCTOBER TERM, 1900.

No. 51.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of THE NEW YORK CLEARING HOUSE BUILDING COMPANY,

Plaintiff in Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

Brief in Reply,

for Plaintiff in Error.

(TAXES OF 1899.)

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Counsel for Plaintiff in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of the New York Clearing House Building Company, Plaintiff in error,

AGAINST

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

No. 51.
October Term, 1900
(Taxes of 1896).

BRIEF IN REPLY,
for plaintiff in error.

The greater part of the brief for defendants in error consists of matter which was appropriate to the questions arising in the state courts, but has no bearing whatever upon the point now involved. The point is that (1) *the action of the Commissioners subjects the relator, merely because it is a corporation, to a rule of taxation more onerous than that applying to an individual owning the same property,* and that (2) *the relator is thus deprived of the equal protection of the laws.*

The position of the defendants in error as to this is that, "it would "be competent for that body (the legislature) to *tax* corporations on "their real estate and *relieve* individuals" (p. 16), and their brief con- "cedes that it was never the *purpose or intent* of the system in the "state of New York to assess for purposes of taxation individuals and "corporations *in the same way*" (p. 17). Taken in connection with the fact that the assessment is not upon franchises but purely

upon the property of the corporation exclusive of franchises (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433 ; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312; s. c. 152 N. Y., 417, 453), this fully concedes that the statute attempts to classify the property assessed solely with reference to its ownership—namely, by individuals or by corporations, and to apply a more onerous rule of taxation to the same property if it be owned by a corporation than that to which it would be subject if it were owned by an individual. It may be observed that the claim of the defendants in error that corporations may be subjected to special rules of assessment different from those applying to individuals owning the same property upon the principle of "classification," completely misses the force of the Fourteenth Amendment. That provides that "no state shall * * deny to any person within its "jurisdiction the equal protection of the laws." Corporations are persons within its meaning (Brief for plaintiff in error, p. 7). Its force is the same, therefore, as if the provision were that equal protection shall be afforded to all persons, including both natural and artificial persons. In the face of this the claim that the legislature can deprive artificial persons of protection equal to that afforded to natural persons by "classifying" the former by themselves is obviously absurd. Such a distinction is exactly what the amendment prohibits.

The inequality of protection which the defendants in error concede clearly follows from the very language of the statute (Laws of 1857, Ch. 456, Sec. 3). It provides for assessment of the corporation upon the "*actual*" value of all its property, deducting the real estate at its "*assessed*" value merely. This clearly recognizes that the *assessed* value of the real estate will be less than its *actual* value and provides that a corporation shall be taxed upon the margin of difference as personal property, while an individual is subject to no such tax.

> The brief for the defendants in error refers to the fact that corporations "are allowed by way of arbitrary deduc- "tion, surplus profits or reserve funds exceeding ten per "cent of its capital" (p. 17). This has no application in the present case, because the relator had no such surplus. Accordingly the brief for defendants in error correctly states that it was entitled to no such deduction, "because the re- "lator had no surplus after deducting its debts of $329,050" (p. 5). In point of fact, therefore, no such deduction was made in this case.

The Court of Appeals, too, has held that this unequal protection of the laws is precisely the purpose and effect of the stat-

ute (People *ex rel.* Equitable Gas Light Co. vs. Barker, 144 N. Y., 94). The court after saying that the statutes require all property to be assessed at its actual value (p. 99), adds, "but *it is well known* that this duty cast upon assessors is seldom "performed, and *that the taxation of real estate throughout the "state is generally upon an assessment which represents but part "of its actual value. Assessment at the full value is the exception "and not the rule.* * * Real and personal property are to "to be separately assessed. *In case of an individual assessed for "both, if the realty be undervalued, the loss cannot be made up by ad- "ding it to the assessment of the personalty.* * * *In case of cor- "porations it may happen that an undervaluation in the assessment of "the real estate as such will be corrected in its valuation as part of "the capital, and so the undervaluation may be remedied, and the "whole property be subjected to taxation at its real value*" (pp. 99, 100).

The statute, as applied by the Commissioners, therefore, imposes a more burdensome rule of assessment upon corporations than upon individuals by reason of ownership of similar preperty. The facts of the case fully establish this. If the relator were a natural person, it would be assessed by reason of owning this piece of real estate at $600,000 and no more. Because it is a corporation it is, however, assessed by reason of such ownership of *real estate* in the sum of $165,000 more for *personal property* (Rec., p. 28). The entire assessment for *personal* property arises from the fact that this piece of *real estate* is owned by a corporation and not by an individual—and that, too, although, as just said, the subject of assessment is not the franchises, but the other property of the corporation (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433).

The facts in this case, therefore, show exactly the manner in which and the extent to which the relator has been deprived of the equal protection of the laws. Inasmuch, then, as the Court of Appeals has held and the defendants in error concede that this deprivation is the natural and actual effect of the statutes, as administered by the assessing officers, the suggestion of the brief of the defendants in error that there is nothing in the record showing general inequality in assessments as between corporations and individuals (pp. 23–27), is idle. This is especially the case in view of the other suggestion of the brief that in any case inequality would be no ground for relief (pp. 20, 21). The statute is a rule of assessment at full,

actual, value in the case of corporations which does not apply in the case of individuals. Its consequences are shown by the facts here. The grievance of the relator is that it has been deprived of protection of the laws equal to that afforded to an individual under similar circumstances.

So far as concerns the effect of the statute generally, it may be added, however, that in the case of all corporations owning real estate consequences similar to the present must follow from the practice of assessing real estate at less than its actual value, and that not merely has the Court of Appeals declared that this practice prevails in New York, but that this court also knows judicially that it is general throughout the country. In Cummings vs. National Bank, 101 U. S., 153, 162, after discussing such a practice prevailing in the state of Ohio, it said, "it is "proper to say, in extenuation of the rule of primary valuation of "different species of property developed in this record, that it is "not limited to the state of Ohio, or to part of it. The constitu- "tions and the statutes of nearly all the states have enactments de- "signed to compel uniformity of taxation and assessments at the "actual value of all property liable to be taxed. The phrases "'salable value,' 'actual value,' 'cash value,' and others used in the "directions to assessing officers, all mean the same thing, and are "designed to effect the same purpose. Burroughs, Taxation, p. 227, "sect. 99. *But it is a matter of common observation that in the "valuation of real estate this rule is habitually disregarded.* And "while it may be true that there has not been in other states such "concerted action over a large district of country by the primary as- "sessors in fixing the precise rates of departure from actual value, as "is shown in this case, it is believed that the valuation of real "estate for purposes of taxation rarely exceeds half of its current "salable value. If we look for the reason for this common "consent to substitute a custom for the positive rule of the statute, "it will probably be found in the difficulty of subjecting personal "property, and especially invested capital, to the inspection of the "assessor and the grasp of the collector. The effort of the land- "owner, whose property lies open to view, which can be subjected "to the lien of a tax not to be escaped by removal, or hiding, to "produce something like actual equality of burden by an under- "valuation of his land, has led to this result. But whatever may "be its cause, when it is recognized as the source of manifest in- "justice to a large class of property around which the Constitution

" of the state has thrown the protection of uniformity of taxation " and equality of burden, the rule must be held void, and the in- " justice produced under it must be remedied so far as the judicial " power can give remedy."

So, too, it is obvious that there is nothing in the suggestion of the defendants in error that if the Commissioners complied with all the statutes, no injustice would result (pp. 17–19). The statute now involved (Laws of 1857, Ch. 456, Sec. 3), the Court of Appeals and this court agree that the assessing officers do *not* comply with the rule of assessment at full value in the case of individuals. The record shows the result flowing from the administration of the statutes in accordance with the manner sanctioned by the Court of Appeals and upheld by the defendants in error, to be that the relator is deprived of the equal protection of the laws. Whether that result follows from the statute or from the action of the officials in administering the statute, the assessment equally offends against the constitutional guaranty of equal protection (People vs. Weaver, 100 U. S., 539; Whitbeck vs. Mercantile Bank, 127 U. S., 193). " These prohibitions (of the Fourteenth Amendment) " extend to all acts of the state whether through its legislative, its " executive or its judicial authorities " (Scott vs. McNeal, 154 U. S., 34, 45; *Ex parte* Virginia, 100 U. S., 339, 347; Yick Wo vs. Hopkins, 118 U. S., 356, 373; Chicago Co. vs. Chicago, 166 U. S., 226, 234.

There is, therefore, no question that this corporation is subjected to a more onerous rule of assessment than an individual would be by reason of exactly the same property. Indeed, the defendants in error affirmatively claim (Brief, p. 16) that it is entirely competent for the legislature to make such a distinction based solely upon the personality of the owner. But it needs no argument to show that this deprives the relator of the equal protection of the laws.

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Of Counsel.

No. 51.

NOV 3 1900.

JAMES H. MCKENNEY, CLERK

Sup. Ct. U.S. Opdyke & Willcox for P.

Supreme Court of the United States.

Filed Nov. 3, 1900.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

OCTOBER TERM, 1900.

No. 51.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of THE NEW YORK CLEARING HOUSE BUILDING COMPANY,

Plaintiff in Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York,

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Reply,

for Plaintiff in Error to "Synopsis of Oral Argument" of Defendants in Error.

(TAXES OF 1899.)

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Counsel for Plaintiff in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of the New York Clearing House Building Company,
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AGAINST

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

No. 51. October Term, 1900, (Taxes of 1896).

REPLY TO "SYNOPSIS OF ORAL ARGUMENT" FILED BY DEFENDANTS IN ERROR.

The defendants in error, in their first brief sought to sustain the method of assessment now in question upon the grounds that under the constitution and statutes of New York "it would "be competent for (the legislature) to *tax* corporations "on their real estate and *relieve* individuals" (p. 16); "it "was never the *purpose* or *intent* of the system in the state "of New York to assess for purposes of taxation individuals and cor- "porations *in the same way*" (p. 17), and that, therefore, corporations had been "classified" (p. 17) for taxation upon the amount of their real and personal property under rules differing from those applying to natural persons. After reading the Brief in Reply for the plaintiff in error, counsel for defendants in error seem to have seen that these contentions of their brief concede that the method of assessment in this case is unconstitutional for the reason that the

Fourteenth Amendment secures to artificial persons the same protection of the law as that afforded to natural persons (Brief in Reply, p. 2), and, therefore, it is unconstitutional to classify artificial persons by themselves for more onerous taxation than natural persons by reason of ownership of identically similar property.

Accordingly counsel for defendants in error produced and filed at the argument a brief styled "Synopsis of Oral Argument," in which their position is very radically changed. Their contention is no longer that it is intended by the system prevailing in New York that corporations shall be assessed differently from individuals and that it is competent for the State to thus deprive the plaintiff in error of the equal protection of the laws. At present their reliance is upon the contention that the plaintiff in error can have no relief merely because it has not proved to a demonstration that similar injustice has been done to others as well as to itself, but has relied upon the unavoidable effect of the statute, as stated by the Court of Appeals and as illustrated in this case, as establishing that it has been deprived of the equal protection of the laws.

> Counsel seems to intimate also that the question here involved was not properly raised below. But it is clear that there is nothing in this suggestion. The petition for the writ of *certiorari* (Record, p. 7) refers to the Fourteenth Amendment, and after stating the facts in the case alleges that the action taken in making the assessment, "construes "the statute as imposing upon one class of persons, namely, "corporations, taxation at a greater rate than upon another "class of persons by reason of the ownership of property "identically similar in character. Obviously such a con- "struction renders the statute unconstitutional." This clearly raised the question at the earliest stage of the proceeding.

This contention of the Synopsis clearly misapprehends the character of the present proceeding. It has, of course, been held that where an injunction is sought in advance it should be shown that the injustice of which complaint is made arises from an erroneous general rule of taxation. This is because there is ordinarily an adequate remedy at law, which will secure redress in each separate instance and equity will not entertain jurisdiction merely because the tax is illegal, but there must be some element of equitable jurisdiction, such as prevention of a multiplicity of suits.

But the present case is a direct proceeding to set aside the assessment which has been made against the plaintiff in error under

the general rules upon the subject. Its ground is that the plaintiff in error, by reason of owning this single parcel of real estate, is subject to a more onerous assessment because it is an artificial person than it would be if it had been a natural person, and thus is deprived of the equal protection of the laws. How can it be important to show that others also are subjected to similar injustice? They are not before the court; their wrongs could not be remedied in this proceeding, and the facts regarding them would not affect in any degree the facts regarding the relator. The inequality of protection follows as an inevitable consequence from the fact that assessments are made against natural persons under one statute and against corporations, not only under that statute, but also under another in addition. The entire assessment now involved is the effect of a statute (Laws of 1857, Ch. 456) which has application to corporations alone.

The real estate of both natural and artificial persons is assessed under the general provision that it shall be assessed where it is situated at its full and true value (1 R. S., Sec. 1, 9th ed., p. 1680; *Id.*, Sec. 17, 9th ed., p. 1685). A corporation is then subject to a further assessment upon its capital stock which is defined as meaning merely its total gross assets exclusive of franchises (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433). From this total amount of the gross assets is deducted *not* the *actual* value of the real estate, but its *assessed* value, and upon the balance remaining the corporation is assessed at its actual value (Laws of 1857, Chap. 456, Sec. 3) as "taxable personal property" (Record, p. 28). As already said (Brief in Reply, p. 2), the purpose of the statute is indicated by the provision that the capital stock (or gross assets, 126 N. Y., 433), consisting in part of the real estate, shall be assessed at its *actual* value while the real estate shall be deducted only at its *assessed* value. This method recognizes that the two will in fact differ, and is adopted for the purpose of assessing in case of a corporation any margin of difference which may exist between the actual and assessed value of the real estate which margin would not be subject to assessment if the owner were an individual. It is entirely obvious that this is a method of assessment which must lead to a greater rate of taxation than that which would otherwise prevail—if there were not this second assessment upon the real estate as part of its gross assets, a corporation would be subject to taxation only upon the value thereof fixed in assessing the real estate of the county generally.

It was suggested at the argument that this rule could not apply to an individual because an individual has no capital stock. This is based upon a misapprehension of the meaning of "capital stock" in this statute. As already pointed out it means nothing save the property of a corporation (Brief for plaintiff in error, p. 5); the franchises which constitute the difference between an artificial and a natural person are not an element in the assessment. The assessment is arrived at from a statement of its total assets which the corporation is required to furnish and which in the present case will be found in the record (pp. 9, 21). An individual might equally be required to furnish a statement of his total assets, and it might be provided that the assessed value of his real estate should be deducted and he should be taxed on the balance as personal property. This would be the identical course which is now pursued in the case of corporations, but from which individuals are free.

The statute is intended to cover the case of the real estate of a corporation being assessed below its actual value. Its purpose is to compel a corporation to pay taxes upon any such margin of difference while an individual owning the same real estate will be under no such obligation. As already said when the Court of Appeals came to discuss this precise aspect of the statute (People *ex rel.* Equitable Gas Co. vs. Barker, 144 N. Y., 94), it stated not only that the statute was passed to meet the generally known fact that the officials assessed real estate at less than its actual value, but that the effect of the statute would be that an individual so assessed would not be taxable further while a corporation would be taxed upon this margin of difference. As the language of the court covers the point fully it seeme not improper to again repeat it. The court said, "*but it is well known* that this "duty cast upon assessors is seldom performed, and *that the taxation* "*of real estate throughout the state is generally upon an assessment* "*which represents but part of its actual value. Assessment at the* "*full value is the exception and not the rule.* * * * Real and "personal property are to be separately assessed. *In case of an* "*individual assessed for both, if the realty be undervalued, the loss* "*cannot be made up by adding it to the assessment of the personalty.* "* * * * *In case of corporations it may happen that an under-* "*valuation in the assessment of the real estate as such will be* "*corrected in its valuation as part of the capital, and so the under-* "*valuation may be remedied, and the whole property be subjected to* "*taxation at its real value*" (pp. 99, 100).

It is a glaring error to allege that these rulings were largely *obiter* and a "mere observation" (Synopsis, p. 6) on the part of the Court of Appeals. The facts in the Equitable Gas Co. case show that it was decided upon these precise grounds, and that if the court had not taken judicial notice of the difference usually prevailing between assessed and actual values of real estate, there would have been no foundation for the decision. In the course of the general assessment of the real estate of the county, the Commissioners had assessed the relator's real estate. When they came to assess its gross assets (capital stock) they charged it with the real estate at a considerably greater sum than its assessed value. When the relator made its "statement of its gross assets for purposes of assessment," it stated the real estate at its assessed value on the same ground with that stated in the Synopsis for defendants in error (p. 4)—that "the assessed value of real estate is in theory its actual value." The question, therefore, was whether the assessed value was conclusive as expressing the actual value, or whether it was competent for the Commissioners to assess the relator upon a greater sum as the actual value of the real estate—that is to say, the question was whether the assessed value and actual value were the same, as the statute required, or the assessed value was less than the actual value. Upon this subject there was no proof showing that the statute had not been followed, and that the assessed value was less than the actual value. As in the present case, the assessment upon capital stock depended wholly upon the existence of a difference between the two; unless there was such a difference, the assessment could not stand. Unless the court took judicial notice of the fact that assessed and actual values ordinarily differed, it would be compelled to vacate the assessment.

The court thereupon said that the theory of the statute is that real estate, for the purpose of taxation, shall be assessed at its full value, but that "it is well known that (the duty of "assessing at full value) cast upon assessors is seldom performed, "and that taxation of real estate throughout the state is generally "upon an assessment which represents a part of its actual value. "Assessment at full value is the exception and not the rule." And having taken judicial notice of this state of facts, it proceeded to uphold the assessment upon the ground that, although the statute requires that the two should coincide in point of fact, the assessed value and the actual value of real estate in general do not coincide and that it was competent for the Commissioners to assess upon

the basis of the actual value notwithstanding that it exceeded the assessed value. It is perfectly clear, therefore, that the court took judicial notice of the general practice of assessing real estate below its value, and that its action in so doing was not *obiter* but was necessary to the decision.

In any case, there can be no question that, when a court acting judicially states that facts not appearing in the record, but which it deems necessary to state as grounds of the decision are "well known," it takes judicial notice of their existence. The ordinary expression is that the court will take notice of matters of "common "knowledge" (King vs. Gallun, 109 U. S., 99, 101). "Courts will "take notice of whatever is generally known within the limits of "their jurisdiction; and if the judge's memory is at fault, he may "refresh it by resorting to any means for that purpose which he "may deem safe and proper" (Brown vs. Piper, 91 U. S., 37, 42). In the instance under discussion this statement by the Court of Appeals that it had judicial knowledge of the facts is peculiarly proper and peculiarly well founded, because the facts annually appear in the official publications of the executive branch of the government. The annual reports to the legislature of the State Board of Tax Commissioners of the State of New York contain tables showing the percentage of assessed value of real estate through the state to the actual value thereof. The years involved in the present case are 1896 and 1897. These tables show that for the year 1896 the average percentage of assessed value to the actual value was slightly under sixty-six per cent. throughout the State and in New York County was sixty-three per cent., and for the year 1897 was slightly under seventy per cent. throughout the State and in New York County was sixty-three per cent. As the Court of Appeals has held the practice to be a matter of judicial notice, a complete copy of the schedule taken from the report of the State Tax Commissioners for the year 1896 is attached to this brief, showing the extent of the practice in question, and how entirely the Court of Appeals was warranted in judicially knowing of its existence.

The view that the Court of Appeals in the Equitable Gas Co. case took judicial notice of the facts is supported also by the opinion of Mr. Justice BEEKMAN in People *ex rel.* Sutphen vs. Feitner, 27 Misc., 384, 387, a case argued by the present counsel for the defendants in error. Mr. Justice BEEKMAN said "that while it is true that the law requires "property to be assessed for purposes of taxation at its "actual value, it *is a matter of common knowledge* that such

" has not been the practice, the assessment usually falling " much below that standard. Indeed, *judicial notice* of the " fact was taken in the case of the People *ex rel.* Equitable " Gas Co. vs. Barker, 144 N. Y., 94, where it was said that " (p. 99), ' it is well known that this duty cast upon assessors " ' is seldom performed and that the taxation of real estate " ' throughout the state is generally upon an assessment " ' which represents but part of its actual value. Assessment " ' at the full value is the exception and not the rule.' "

It has been already pointed out (Brief in Reply, p. 4), that in the case of Cummings vs. National Bank, 101 U. S., 153, 162, quite irrespective of the proof regarding the state of facts in Ohio where the case arose, this court took judicial notice of the fact, that throughout the country real estate is assessed at less than its actual value saying that, " it is a matter of common observation that in the valuation " of real estate this rule (of assessment at full value) is habit- " ually disregarded."

So, too, in the case of Dundee Mortgage Co. vs. Parrish, 24 Fed. Rep., 197, 202, the court said, " indeed, the practice " is so universally well known that the court may take " judicial notice of it and safely assume that there is not an " acre of land in Oregon that is valued for taxation at more " than half its true cash value and that generally it is not " valued at more than one-third of such value."

In Railroad and Telephone Cos. vs. Board, 85 Fed. Rep., 302, it was held, as stated in the syllabus, that " a court may " take judicial notice of an established custom of the assess- " ors of the state to assess property for taxation at less " than its actual value."

The authorities, therefore, support the Court of Appeals in taking judicial notice of this fact and the reports published by the State Tax Commissioners, who are especially charged with the duty of ascertaining the facts, show its extent. It seems idle for counsel to contend that under these circumstances the court must shut its eyes to the truth.

The facts in the present case show that what the Court of Appeals says " may happen " under this statute has in fact happened. The real estate of the relator was assessed by these Commissioners under the general assessment applying to both corporations and natural persons at $600,000. Then as a part of the gross asets or capital stock of the relator it was assessed by the same Commissioners at $965,000 (pp. 19, 20). From this an assessment was figured out at $165,999 as " personal property " (p. 28). An individual owning this parcel of real estate would not have been subject to this further assessment, but only to the assessment of

$600,000. This was the case in the two successive years 1896 and 1897.

The assessment in question, therefore, follows from the administration of the statutes as a consequence, said by the Court of Appeals to be their natural result. It is idle to claim that the plaintiff in error has not fully established that the act of the State in making this assessment deprives it of the equal protection of the laws, or that it is incumbent upon the plaintiff in error to show that similar wrongs have been inflicted upon other persons. The injustice to itself has inevitably followed from an administration of the statutes in the manner which the Court of Appeals says is "well known" to be general. There is nothing in the claim that plaintiff in error should prove that an indefinite number of others have been wronged, as a condition of redress for the indisputable wrong to itself. It would amount to a denial of justice to hold a party aggrieved to the necessity of such an indefinite, irrelevant and expensive inquiry.

In their first brief (p. 19) counsel made a separate point of the proposition that "a failure to comply with its provisions cannot "render a statute unconstitutional." Perceiving that this proposition had no bearing upon the case, in their Synopsis counsel concede (p. 7) that if the plaintiff in error has been deprived of the equal protection of the laws "it would make no difference whether "that result followed from the statute or from the action of the tax "officials in administering the statute." They then proceed to laboriously distinguish between the facts of the present case and of certain cases cited in the Brief in Reply for the plaintiff in error (p. 5). These distinctions are of no present importance. The cases are not cited as parallel with the facts of the case at bar, but as establishing under a great variety of circumstances the general principle which the defendants in error have thus just admitted, and which is expressed in one of the cases in these words: "these pro- "hibitions [of the fourteenth amendment] extend to all acts of the "State, whether through its legislative, its executive, or its judicial "authority" (Scott vs. McNeal, 154 U. S., 34, 45). The contention that if all the provisions of law were complied with no injustice would result, is without weight. As was said in Yick Wo vs. Hopkins, 118 U. S., 359, in the extract cited in the Synopsis of defendants in error (p. 10), "though the law itself be fair on its face "and impartial in appearance, yet if it is applied and administered

"by public authority with an evil eye and an unequal hand, so as "practically to make unjust and illegal discriminations as between "persons in similar circumstances material to their rights, the de- "nial of equal justice is still within the prohibition of the constitu- "tion." To the same effect is National Bank vs. Kimball, 103 U. S., 732, 735.

The contention of the Synopsis, therefore, comes down to a claim that one who is deprived of equal protection of the laws cannot have relief unless he shows not merely by the natural result of the course which has been pursued in his own case and also by facts of which the court takes judicial notice, but also by affirmative proof, that an indefinite number of others have suffered like injustice. This is manifestly absurd.

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Of Counsel for plaintiff in error.

PERCENTAGE TABLES,

taken from the official report of the State Board of Tax Commissioners of New York for the year 1896, showing the Average Percentage of Assessment for the entire State for the Year 1896.

Counties.	Percentage Table, 1896.	Assessed Value of Real Estate, 1895.	100 Per Cent. of Full Value of Real Estate.
Albany	.75	$89,006,610	$118,675,480
Allegany	.70	12,910,181	18,443,115
Broome	.73	30,210,906	41,364,802
Cattaraugus	.70	17,101,504	24,430,720
Cayuga	.69	27,493,789	39,486,071
Chautauqua	.68	26,235,139	38,581,086
Chemung	.68	21,881,436	32,178,582
Chenango	.73	14,875,107	20,376,858
Clinton	.66	5,935,241	8,992,789
Columbia	.67	21,370,352	31,896,047
Cortland	.55	7,857,529	14,286,416
Delaware	.60	12,018,039	20,030,065
Duchess	.71	42,025,788	59,191,250
Erie	.70	261,760,957	373,944,224
Essex	.78	9,701,973	12,438,426
Eranklin	.70	8,240,208	11,771,725
Fulton	.60	9,659,401	16,099,001
Genesee	.60	17,219,281	28,698,801
Greene	.72	12,043,471	16,727,043
Hamilton	.92	1,890,808	2,055,226
Herkimer	.58	15,860,774	27,346,162
Jefferson	.80	31,099,110	38,873,887
Kings	.68	542,700,471	798,088,927
Lewis	.60	6,558,702	10,931,170
Livingston	.70	22,953,945	32,791,350
Madison	.67	17,952,873	26,795,332
Monroe	.70	134,772,663	192,532,375
Montgomery	.70	23,190,442	33,129,202
New York	.63	1,646,028,655	2,612,743,896
Niagara	.75	33,947,687	45,263,582
Oneida	.60	43,019,488	71,699,146
Onondaga	.85	96,158,330	113,127,447
Ontario	.78	28,858,675	36,998,301
Orange	.62	33,764.310	54,458,403

Counties.	Percentage Table, 1896.	Assessed Value of Real Estate, 1895.	100 Per Cent. or Full Value of Real Estate.
Orleans	.78	15,555,225	19,942,596
Oswego	.71	24,023,123	33,835,384
Otsego	.59	16,534,225	28,024,110
Putnam	.72	6,363,211	8,837,793
Queens	.50	55,142,575	110,285,150
Rensselaer	.80	71,612,170	89,515,212
Richmond	.50	20,271,267	40,542,534
Rockland	.58	11,335,161	19,543,381
Saratoga	.60	19,576,903	32,628,171
Schenectady	.69	14,548,687	21,085,053
Schoharie	.80	11,173,435	13,966,668
Schuyler	.65	5,931,151	9,124,847
Seneca	.79	15,136,674	19,160,346
St. Lawrence	.84	33,031,000	39,322,619
Steuben	.80	29,599,834	36,999,792
Suffolk	.62	18,989,444	30,628,135
Sullivan	.70	5,446,341	7,780,487
Tioga	.75	12,529,233	16,705,644
Tompkins	.55	9,971,138	18,129,341
Ulster	.71	24,946,572	35,136,016
Warren	.80	7,020,837	8,776,146
Washington	.75	17,437,466	23,249,954
Wayne	.71	23,195,518	32,669,743
Westchester	.51	90,498,948	177,448,917
Wyoming	.65	12,859,469	19,783,798
Yates	.65	9,819,925	15,107,576
		$3,908,853,377	$5,933,056,320

5,933,056,320) 3,908,853,377

.658826272 Average per cent for entire estate.

The similar table for the year 1897, contained in the Tax Commissioners' report for that year, shows that the average percentage of assessment for the entire State was 69.75, and the percentage in New York County was 63.